

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 212 19 93Bill H 292 S _____ Original bill & history cH. Committee on State AdministrationHearing Date(s) Jan 27 ☒ CFeb 02 ☒ C

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Date Out Feb 02 ☒ CS. Committee on Business & IndustryHearing Date(s) Mar 02 ☒ C

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Mar 02 ☒ CDid this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

3/12 SIGNED BY PRESIDENT
 3/15 TRANSMITTED TO GOVERNOR
 3/18 SIGNED BY GOVERNOR
 CHAPTER NUMBER 113
 EFFECTIVE DATE: 10/01/93

HB 292 INTRODUCED BY LARSON
 AUTHORIZE PUBLIC SERVICE COMMISSION TO ADOPT RULES BASED ON
 NATIONAL ELECTRICAL SAFETY CODE
 BY REQUEST OF PUBLIC SERVICE COMMISSION

1/19	INTRODUCED		
1/20	REFERRED TO STATE ADMINISTRATION		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
1/27	HEARING		
2/03	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/05	2ND READING PASSED	96	3
2/08	3RD READING PASSED	92	3
	TRANSMITTED TO SENATE		
2/10	FIRST READING		
2/10	REFERRED TO BUSINESS & INDUSTRY		
3/02	HEARING		
3/02	COMMITTEE REPORT—BILL CONCURRED		
3/03	2ND READING CONCURRED	48	0
3/04	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 212		
	EFFECTIVE DATE: 10/01/93		

HB 293 INTRODUCED BY MCCARTHY
 ELIMINATE REQUIREMENT THAT REGENTS CONTRACT ONLY WITH
 NONPROFIT CORPORATION TO ADMINISTER LOANS GRANTED UNDER
 GUARANTEED STUDENT LOAN PROGRAM
 BY REQUEST OF COMMISSIONER OF HIGHER EDUCATION

1/21	INTRODUCED		
1/21	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/21	FIRST READING		
2/08	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/11	2ND READING PASSED	95	4
2/13	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/16	FIRST READING		
2/16	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/05	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED	48	0
3/10	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		

1 House BILL NO. 292
 2 INTRODUCED BY Lamm
 3 BY REQUEST OF THE PUBLIC SERVICE COMMISSION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC
 6 SERVICE COMMISSION TO ADOPT RULES IMPLEMENTING LAWS ON
 7 CONSTRUCTION STANDARDS FOR UTILITIES LINES AND FACILITIES;
 8 AUTHORIZING THE COMMISSION TO ADOPT BY RULE REVISED EDITIONS
 9 OF THE NATIONAL ELECTRICAL SAFETY CODE; AND AMENDING SECTION
 10 69-4-201, MCA."

11
 12 STATEMENT OF INTENT

13 A statement of intent is needed for this bill because
 14 [section 1] authorizes the public service commission to
 15 adopt rules to implement and enforce Title 69, chapter 4,
 16 part 2, and to adopt by rule revised editions of the
 17 national electrical safety code. The legislature intends
 18 that the commission may adopt those revisions of the safety
 19 code or parts of a revised safety code that the commission
 20 determines necessary or appropriate for the protection of
 21 public health, safety, or welfare. The commission may also
 22 adopt other requirements either more or less stringent than
 23 the national safety code. The commission may adopt
 24 procedural rules that it considers necessary or appropriate
 25 to implement and enforce Title 69, chapter 4, part 2.

1
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

3 Section 1. Section 69-4-201, MCA, is amended to read:

4 "69-4-201. Application of national electrical safety
 5 code. (1) The national electrical safety code standards
 6 shall govern all future construction involving wires for
 7 power, heat, light, telephone, telegraph, or signal
 8 transmission or reception. Except as provided in 69-4-203,
 9 electrical construction of overhead and underground
 10 electrical supply and communication lines in the state shall
 11 must be in conformity with the rules set forth in the
 12 national electrical safety code approved by the American
 13 national standards institute as published by the institute
 14 of electrical and electronic engineers. The national
 15 electrical safety code shall provide construction
 16 standards and shall must be enforced by the public--service
 17 commission. Proof of compliance with the requirements of an
 18 applicable national electrical safety code standard
 19 establishes due care in the defense of a negligence claim
 20 alleging a violation of that standard.

21 (2) The commission may adopt rules to implement and
 22 enforce this part. The commission may, in its discretion,
 23 adopt by rule revised editions of the national electrical
 24 safety code."

-End-

-2-



HB 292
 INTRODUCED BILL

STATE OF MONTANA - FISCAL NOTE
Form BD-15

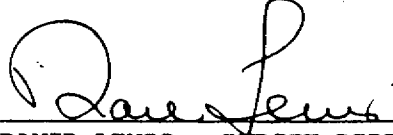
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0292, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: Authorizes the Public Service Commission to adopt rules implementing laws on construction standards for utilities lines and facilities.

ASSUMPTIONS:

1. The Commission will adopt by rule revised editions of the National Electric Safety Code.
2. Sufficient funds for rule changes are included in the recommended budget.

FISCAL IMPACT: None.

 1-23-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-23-93

DON LARSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0292, as introduced

HB 292

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By DICK SIMPKINS, CHAIR, January 27, 1993, at
8:04 a.m.

ROLL CALL

Members Present:

Rep. Dick Simpkins, Chair (R)
Rep. Wilbur Spring, Vice Chair (R)
Rep. Ervin Davis, Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Bob Gervais (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 217; HB 265; HB 292
Executive Action: HJR 5; HB 265 (tabled)

EXECUTIVE ACTION ON HJR 5

Susan Fox, Staff, Districting and Apportionment Commission,
distributed a list of proposed amendments to HJR 5 and reviewed
the impact of each amendment. **EXHIBIT 1**

HEARING ON HB 292Opening Statement by Sponsor:

REP. DON LARSON, House District 65, Seeley Lake, introduced HB 292 by request of the Public Service Commission. The bill authorizes the Public Service Commission adopt rules implementing laws on construction standards for utilities' lines and facilities.

Proponents' Testimony:

Ivan "Chuck" Evilsizer, Staff Attorney, Public Service Commission (PSC), submitted written testimony in which he explained that, currently, the PSC is restricted by law to the 1977 edition of the National Electrical Safety Code (NESC), even though the Safety Code has been revised several times since 1977. Rather than asking the Legislature to adopt the most recent edition of the NESC each time it is revised, the PSC is seeking the rule-making authority to enable their adoption of the most current edition of the Safety Code. EXHIBIT 21

John Alke, attorney, Montana Dakota Utilities, expressed their support for the effort to adopt the most current revision of the Safety Code. He stated, however, that HB 292, as currently drafted, seems to give the PSC discretion over which portions of the Safety Code they adopt. He explained that Montana Dakota Utilities serves customers in four different states, and they consider it critical to have uniform Safety Codes operating in all states. He presented an amendment to require the PSC to adopt the most recent edition of the NESC. EXHIBIT 22

Gene Phillips, attorney, Pacific Power and Light (PP&L), stated PP&L serves seven states and considers uniform construction codes necessary. He pointed out that line crews cross state lines, particularly during emergencies, and they would not be trained to work in Montana if Montana's safety codes varied from other states. He stated PP&L supports the proposed amendment to require the adoption of the Safety Code without change or variation. He urged the committee support the amendment.

Gary Willis, Montana Power Company, supports HB 292 with the proposed amendment.

Dan Walker, U.S. West, also supports HB 292 if amended.

Opponents' Testimony: None.

Informational Testimony:

Mr. Evilsizer presented his position on the proposed amendment; he noted the PSC had taken no position on the amendment. He stated he did not take issue with the substance of the amendment, however, he concluded the amendment would be unconstitutional.

In his view, the constitutional problem lies in the mandatory delegation of authority through the PSC to a private agency, in this case, the Accredited Standards Committee which publishes the NESC. He urged the committee consider the constitutional question.

Questions From Committee Members and Responses:

REP. MOLNAR expressed his concern that Montana could become like Louisiana, the only state not to adopt uniform safety codes. As a result, he said many contractors will not work in Louisiana and construction costs are higher. He compared the NESC to uniform building codes adopted by Montana and asked Mr. Evilsizer why there was not a similar constitutional question on the uniform building codes. Mr. Evilsizer responded he had no opinion on other situations. He asserted that, in fact, the PSC would adopt the uniform standards. He suggested, however, there might be some circumstance unique to Montana which would require more or less stringent standards, and HB 292 would give the PSC the flexibility to respond to Montana's needs.

REP. ROSE suggested that without the amendment, PSC's power would be unlimited and unregulated. Mr. Evilsizer responded he did not think the bill gave the PSC an unrestricted grant of authority. He suggested that, historically, the rationale for administrative agencies is that they work full-time and have staff to study issues and apply expertise on a day-to-day basis and thus relieve the legislative workload. He gave the example of setting utility rates as a legislative act which has been delegated to the PSC.

REP. MASON asked Mr. Evilsizer if he would be willing to work with the utilities and draft language for the amendment agreeable to everyone. Mr. Evilsizer stated he would be willing to work with the utilities on language. He asked REP. MASON whether he wanted language to adopt the 1993 edition of NESC or to work on some means other than rule-making to adopt subsequent editions. REP. MASON stated he wanted subsequent editions to be adopted without consideration by the Legislature, but to restrict the adoption to the National Electrical Safety Code.

REP. GERVAIS asked Mr. Evilsizer whether HB 292 could be amended to allow tribal inspectors. Mr. Evilsizer clarified that the PSC does not conduct inspections; the PSC only responds to the public, utilities, and others.

REP. SPRING asked whether the PSC foresees a problem which requires its rule-making authority be strengthened. Mr. Evilsizer responded the PSC has the responsibility to enforce safety codes and under current law is now limited to the 1977 version of the safety codes.

REP. REHBEIN asked for confirmation that the intent of HB 292 was to update the safety codes and asked whether the bill would come regularly to the Legislature for further updating. Mr. Evilsizer

confirmed the intent was to keep the safety codes updated. He noted HB 292 was drafted as the result of an inquiry to a PSC engineer about the codes. She asked Mr. Evilsizer which edition of the Safety Codes she was supposed to be using, and he discovered the law had not been amended since 1979.

REP. SIMPKINS asked Mr. Evilsizer whether the PSC had any constitutional authority. Mr. Evilsizer responded that the PSC and its authority were established by statute.

Closing by Sponsor:

REP. LARSON reviewed the purpose of the bill as updating the construction standards used by the PSC. He maintained the bill would move the State to pursuing a uniform code which keeps Montana consistent with neighboring states. He suggested the concern over the mandatory delegation of power was splitting hairs. He recommended the amendment be adopted.

HEARING ON HB 265

Opening Statement by Sponsor:

REP. DON LARSON, House District 65, Seeley Lake, introduced HB 265 to require the Department of Justice give 24 hours notice of a request to examine or copy records. He noted that when the bill was introduced, the Department of Justice determined the bill could be accomplished administratively. He recommended HB 265 be tabled.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 265

Motion: REP. ROSE MOVED HB 265 DO NOT PASS.

Motion/Vote: REP. MASON MADE A SUBSTITUTE MOTION THAT HB 265 BE TABLED. Motion carried unanimously.

The committee recessed until 11:00 a.m. At that time John MacMaster, Staff Attorney, Districting and Apportionment Commission, provided an informal briefing on the legal considerations of HJR 5 to the House and Senate State Administration Committees.

HOUSE OF REPRESENTATIVES
STATE ADMINISTRATION

COMMITTEE

ROLL CALL

DATE

1/27/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK SIMPKINS, CHAIR	✓		
REP. WILBUR SPRING, VICE CHAIR	✓		
REP. ERVIN DAVIS, VICE CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. PAT GALVIN	✓		
REP. BOB GERVAIS	✓		
REP. HARRIET HAYNE	✓		
REP. GARY MASON	✓		
REP. BRAD MOLNAR	✓		
REP. BILL REHBEIN	✓		
REP. SHEILA RICE	✓		
REP. SAM ROSE	✓		
REP. DORE SCHWINDEN	✓		
REP. CAROLYN SQUIRES	✓		
REP. JAY STOVALL	✓		
REP. NORM WALLIN	✓		

HOUSE BILL NO. 292

NATIONAL ELECTRICAL SAFETY CODE

PSC STATEMENT IN SUPPORT

My name is Ivan Evilsizer and I am appearing here today on behalf of the Montana Public Service Commission (PSC) in support of the passage of House Bill No. 292.

This Bill will grant specific rulemaking authority to the PSC, to allow it to adopt revised editions of the National Electrical Safety Code (N.E.S.C.), as periodically published by Institute of Electrical and Electronic Engineers, Inc. This Code sets national standards governing the construction, operation and maintenance of electric supply stations and lines, and communication lines. A revised edition of the Code is usually published every three years. Amendments are made in each edition, in order to enhance the health and safety of the public.

The PSC has the duty to enforce the N.E.S.C. pursuant to Section 69-4-201, MCA. However, the PSC is legally restricted to enforcing the provisions of the 1977 edition of the Code; based upon the 1979 amendments to Section 69-4-201, MCA. The constitutional delegation doctrine prevents either the Montana Legislature or an administrative agency from prospectively adopting revised editions of a Code issued by a private organization. See generally State v. Holland, 37 Mont. 393 (1908) and Lee v. State, 195 Mont. 1 (1981). Therefore, subsequent editions of the N.E.S.C. can only be enacted as Montana law by the

EXHIBIT 21
DATE 1/27/93

AMENDMENTS TO HB 292

1. Page 1, In 18
Following: "commission "
Strike: "may"
2. Page 1, In 18
Following: "adopt"
Strike: "those"
3. Page 1, In 19
Following: "code"
Strike: "or parts of a revised safety code that the commission"
4. Page 1, In 20-22
Strike: In their entirety
5. Page 1, In 23
Strike: "the National Safety Code"
6. Page 2, In 21-24
Strike: In their entirety
Insert: "The Commission shall adopt rules to implement and enforce this part, including the adoption, by rule, of the most recently published edition of the National Electric Safety Code."

EXHIBIT 22
DATE 1/27/93
HB 292

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

State Administration COMMITTEE BILL NO. HB 292
DATE 1/27/93 SPONSOR(S) Rep. Larson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chuck Evilsizer	Montana PSC	✓	
Dennis Gersantand	Montana PSC	✓	
A.L. All	MOU	✓	
GENE PHILLIPS	PP & L ^{PAUL & L}	✓	
DAN WALKER	US WEST	✓	
Jerry Willis	Montana Power Company	Withdrawing	
Tom McNam	Montana Technical Institute	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By DICK SIMPKINS, CHAIR, on February 2, 1993, at 8:05 a.m.

ROLL CALL

Members Present:

Rep. Dick Simpkins, Chair (R)
Rep. Wilbur Spring, Vice Chair (R)
Rep. Ervin Davis, Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Pat Galvin (D)
Rep. Bob Gervais (D)
Rep. Harriet Hayne (R)
Rep. Gary Mason (R)
Rep. Brad Molnar (R)
Rep. Bill Rehbein (R)
Rep. Sheila Rice (D)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Norm Wallin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Dorothy Poulsen, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 266; HB 317; HJR 6
Executive Action: HB 217; HB 289; HB 292; HJR 6

EXECUTIVE ACTION ON HB 217

Motion: REP. DAVIS MOVED HB 217 DO NOT PASS.

She recounted that earlier in the session the committee had eliminated sunrise audits, and the rationale for elimination was the audits may be unconstitutional because they limit access to the legislative process. She asserted the same constitutional issue was involved with HB 217. REP. RICE reported she had worked with REP. HANSON on an interim subcommittee and their efforts had resulted in three bills which must be sponsored by a legislator. She reported REP. HANSON, however, had refused to carry any of the bills. REP. RICE pointed out, according to the fiscal note, no money would be saved by the legislation. REP. RICE concluded her greatest concern with the bill was it assumed every agency and legislator were the same. Every agency can introduce the same number of bills regardless of the size of the agency or the number of statutes which relate to it; every legislator has the same limit regardless of their motivation. Finally, she reported HB 217 actually allows more bill introductions than the number likely to be introduced this session.

REP. GALVIN agreed with REP. RICE and declared the bill unnecessary.

Vote: HB 217 DO PASS. Motion carried 9 to 7 on a roll call vote with REPS. DAVIS, BARNHART, GALVIN, GERVAIS, RICE, SCHWINDEN, and SQUIRES voting no. EXHIBIT 1

EXECUTIVE ACTION ON HB 292

Discussion:

Sheri Heffelfinger described amendments to HB 292 to direct the PSC adopt standards for electrical safety. EXHIBIT 2

REP. SIMPKINS reported the amendments had been agreed upon by all concerned parties.

Motion: REP. SPRING MOVED HB 292 DO PASS.

Motion/Vote: REP. DAVIS moved to amend HB 292. Motion carried unanimously.

Motion/Vote: REP. SPRING MOVED HB 292 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 289

Discussion:

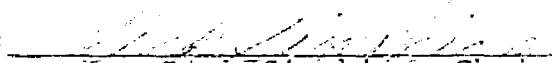
Sheri Heffelfinger described the amendments to HB 289 which remove the provision for cash compensation to state employees for excess vacation leave and allow an extension to the end of the calendar year for using the leave. EXHIBIT 3

HOUSE STANDING COMMITTEE REPORT

February 2, 1993

Page 1 of 2

Mr. Speaker: We, the committee on State Administration report that House Bill 292 (first reading copy -- white) do pass as amended .

Signed: 
Dick Simpkins, Chair

And, that such amendments read:

1. Title, lines 8 and 9.
Following: "ADOPT" on line 8
Strike: "BY" through "OF" on line 9
Insert: "RULES BASED ON"
2. Page 1, line 18.
Following: "commission"
Strike: "may"
Following: "adopt".
Strike: "those"
3. Page 1, lines 19 through 23.
Following: "code" on line 19
Strike: "or" through "code." on line 23
4. Page 2, line 21.
Following: "commission"
Strike: "may"
Insert: "shall"
5. Page 2, line 22.
Following: "commission"
Strike: "may" through "discretion,"
Insert: "shall"

RL 2/2/93 11:41

February 2, 1993
Page 2 of 2

6. Page 2, line 23.

Following: "rule"

Strike: "revised editions"

Insert: "standards for electrical safety. The standards must be
based on standards published in the most recent edition"

-END-

Amendments to House Bill No. 292
First Reading Copy

For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
February 1, 1993

1. Title, lines 8 and 9.

Following: "ADOPT" on line 8

Strike: "BY" through "OF" on line 9

Insert: "RULES BASED ON"

2. Page 1, line 18.

Following: "commission"

Strike: "may"

Following: "adopt".

Strike: "those"

3. Page 1, lines 19 through 23.

Following: "code" on line 19

Strike: "or" through "code." on line 23

4. Page 2, line 21.

Following: "commission"

Strike: "may"

Insert: "shall"

5. Page 2, line 22.

Following: "commission"

Strike: "may" through "discretion."

Insert: "shall"

6. Page 2, line 23.

Following: "rule"

Strike: "revised editions"

Insert: "standards for electrical safety. The standards must be
based on standards published in the most recent edition"

EXHIBIT 2
DATE 2/2/93
HS 292

HOUSE BILL NO. 292

INTRODUCED BY LARSON

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES IMPLEMENTING LAWS ON CONSTRUCTION STANDARDS FOR UTILITIES LINES AND FACILITIES; AUTHORIZING THE COMMISSION TO ADOPT BY-RULE-REVISED-EDITIONS OF RULES BASED ON THE NATIONAL ELECTRICAL SAFETY CODE; AND AMENDING SECTION 69-4-201, MCA."

STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 1] authorizes the public service commission to adopt rules to implement and enforce Title 69, chapter 4, part 2, and to adopt by rule revised editions of the national electrical safety code. The legislature intends that the commission may adopt those revisions of the safety code or parts of a revised safety code that the commission determines necessary or appropriate for the protection of public health, safety, or welfare. The commission may also adopt other requirements either more or less stringent than the national safety code. The commission may adopt procedural rules that it considers necessary or appropriate to implement and enforce Title 69, chapter 4, part 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-201, MCA, is amended to read:

"69-4-201. Application of national electrical safety code. (1) The national electrical safety code standards shall govern all future construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state shall must be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code shall furnish provides construction standards and shall must be enforced by the public-service commission. Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.

(2) The commission may SHALL adopt rules to implement and enforce this part. The commission may---in---its discretionary SHALL adopt by rule revised-editions STANDARDS FOR ELECTRICAL SAFETY. THE STANDARDS MUST BE BASED ON STANDARDS PUBLISHED IN THE MOST RECENT EDITION of the

1 national electrical safety code."

-End-

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on March 2, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: Senator Hager, Senator Toews.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 300, HB 292, HB 139
Executive Action: HB 292, HB 300

HEARING ON HB 300

Opening Statement by Sponsor:

Representative Emily Swanson, House District 79, stated HB 300 was a "housekeeping" bill. She stated HB 300 would extend the length of time for a person to apply for a refund of a telephone exchange access from two to five years. She stated the change was included on line 19 of HB 300.

Proponents' Testimony:

Charlotte Maharg, Department of Revenue, stated the Department was in support of HB 300. She stated HB 300 would align the requirements for refunding the "911 fee" with the rest of the taxes administered.

Dan Walker, U.S. West, stated his support of HB 300.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Representative Swanson if there was a problem with the two-year deadline. Representative Swanson stated the extension was to make it more convenient for the consumers.

Closing by Sponsor:

Representative Swanson closed on HB 300.

HEARING ON HB 292

Opening Statement by Sponsor:

Representative Don Larson, House District 65, stated HB 292 had been drafted at the request of the Public Service Commission (PSC). He stated HB 292 would allow the PSC to have rule making authority over the adoption of the national protection and safety codes, rules, regulations and guidelines. He stated the state had adopted the national rules in 1917, and the utility companies have operated under the guidelines of the national code. He stated the codes need to be updated quite often, and the PSC is asking for rule making authority to adopt the rules without having to go through the legislature.

Proponents' Testimony:

Ivan Evilsizer, Montana Public Service Commission, read from prepared testimony in support of HB 292 (Exhibit #1).

John Alke, Montana/Dakota Utilities, stated his support of HB 292 for the reasons explained by Mr. Evilsizer.

Gene Phillips, Pacific Power and Light (PPL), stated HB 292 is important to PPL and stated his support of HB 292.

SENATE BUSINESS & INDUSTRY COMMITTEE

March 2, 1993

Page 3 of 5

Dan Walker, U.S. West, stated his support of HB 292.

Gary Willis, Montana Power Company (MPC), stated MPC's support of HB 292.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Larson stated he would ask Senator Klampe to carry HB 292 on the floor of the Senate if it were to pass Committee.

HEARING ON HB 139

Opening Statement by Sponsor:

Representative Larry Grinde, House District 30, stated HB 139 was brought to him by the surveyors of Montana. He stated MCA 69-450-2 called for the notification of underground utility digging. He stated the surveyors would like to be exempt from the law because they don't dig deep enough to hit utility lines. He stated HB 139 would save the surveyors time. Representative Grinde referred to page 1, line 24 and 25 and stated the surveyors were allowed only to "hand dig for shallow monuments and to no greater depth than 12 inches". He stated the original law was appropriate for underground digging, but the surveyors do not dig deep enough to make it hazardous. He stated the amendments on page 2, lines 3 and 4, were to attain approval through the proper office. He stated there was a liability section placed by the House which would exempt the governing authority and the utility companies.

Proponents' Testimony:

Bill Bucher, Montana Association of Registered Land Surveyors, read from prepared testimony in support of HB 139 (Exhibit #2).

Gary Willis, Montana Power Company (MPC), stated his support of HB 139. He stated the underground transformers are placed at the corner pins of the property. He stated MPC's concern would be if a surveyor were to come off of the corner pins they would like them to assume all risks.

Dan Walker, U.S. West, stated he supported HB 139.

Gene Phillips, PPL, stated his support of HB 139.

John Alke, Montana/Dakota Utilities, stated his support of HB 139.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, read from prepared testimony in opposition to HB 139 (Exhibit #3).

Questions From Committee Members and Responses:

Senator Harding asked Mr. Hill how he would change the title to make it proper. Mr. Hill stated the title refers to "determining liability for damages incurred or suffered by land surveyors", and HB 139 also covers damages caused by the surveyors. He stated the points he stated were an inconsistency in the title.

Senator Rea asked Representative Grinde what type of liability would be covered if the utility lines were buried 24 inches and the surveyors were only digging 12 inches. Representative Grinde stated the concern was if something were to happen, the liability issue had to be addressed. He stated the chances of liability were not high.

Senator Lynch asked Representative Grinde asked if the title needed to be changed. Representative Grinde stated he would leave the title change to the Committee.

Closing by Sponsor:

Representative Grinde closed on HB 139, stating the surveyors weren't doing excavation and should be exempt.

EXECUTIVE ACTION ON HB 292

Motion/Vote:

Senator Harding moved HB 292 be CONCURRED IN. The motion CARRIED UNANIMOUSLY. Senator Klampe was assigned to carry HB 292.

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 3/2/92

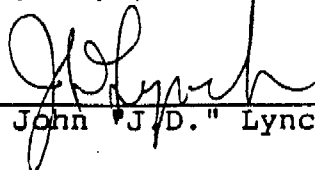
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager		✓	
Senator Harding	✓		
Senator Kennedy	✓	att	
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews		✓	
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 2, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 292 (first reading copy -- blue), respectfully report that House Bill No. 292 be concurred in.

Signed: 
Senator John "J.D." Lynch, Chair

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 3/2/92

BILL NO. HB 292

HOUSE BILL NO. 292

NATIONAL ELECTRICAL SAFETY CODE

PSC STATEMENT IN SUPPORT

My name is Ivan Evilsizer and I am appearing here today on behalf of the Montana Public Service Commission (PSC) in support of the passage of House Bill No. 292.

This Bill will grant specific rulemaking authority to the PSC, to allow it to adopt revised editions of the National Electrical Safety Code (N.E.S.C), as periodically published by Institute of Electrical and Electronic Engineers, Inc. This Code sets national standards governing the construction, operation and maintenance of electric supply stations and lines, and communication lines. A revised edition of the Code is usually published every three years. Amendments are made in each edition, in order to enhance the health and safety of the public.

The PSC has the duty to enforce the N.E.S.C. pursuant to Section 69-4-201, MCA. However, the PSC is legally restricted to enforcing the provisions of the 1977 edition of the Code; based upon the 1979 amendments to Section 69-4-201, MCA. The constitutional delegation doctrine prevents either the Montana Legislature or an administrative agency from prospectively adopting revised editions of a Code issued by a private organization. See generally State v. Holland, 37 Mont. 393 (1908) and Lee v. State, 195 Mont. 1 (1981). Therefore, subsequent editions of the N.E.S.C. can only be enacted as Montana law by the

Legislature itself, or an administrative agency pursuant to rulemaking authority delegated by the Legislature.

Since the N.E.S.C. is amended approximately every three years by the N.E.S.C. Code Committee, it would be most efficient for the Legislature to delegate rulemaking authority in this area to the PSC. This Bill would ensure that the appropriate standard in this area can be efficiently adopted as Montana law by PSC rulemaking, and thereby better protect the health and safety of Montana citizens.

DATE March 2, 1993

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 139 HB 292 HB 300

Name Representing Bill No. Check One
Support Oppose

William Bucher	MARLS	139	X	
Chuck Evilsizer	PSC	292	X	
Char Maharg	DOR	300	X	
Bruce Berrett	MDT	139	X	
GENE PHILLIPS	PP&L	139	X	
" "	"	292	X	
Russell B Hill	Mont Trial Lawyers	HB 139		✓
Gary Willis	M.P.C.	H.B. 139	X	
" "	"	H.B. 292	X	
John Alke	MDY	HB 292	X	
John Alke	MDY	HB 139	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE BILL NO. 292

INTRODUCED BY LARSON

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES IMPLEMENTING LAWS ON CONSTRUCTION STANDARDS FOR UTILITIES LINES AND FACILITIES; AUTHORIZING THE COMMISSION TO ADOPT BY-RULE-REVISED EDITIONS OF RULES BASED ON THE NATIONAL ELECTRICAL SAFETY CODE; AND AMENDING SECTION 69-4-201, MCA."

STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 1] authorizes the public service commission to adopt rules to implement and enforce Title 69, chapter 4, part 2, and to adopt by rule revised editions of the national electrical safety code. The legislature intends that the commission may adopt those revisions of the safety code or parts of a revised safety code that the commission determines necessary or appropriate for the protection of public health, safety, or welfare. The commission may also adopt other requirements either more or less stringent than the national safety code. The commission may adopt procedural rules that it considers necessary or appropriate to implement and enforce Title 69, chapter 4, part 2.



BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-201, MCA, is amended to read:

"69-4-201. Application of national electrical safety code. (1) The national electrical safety code standards shall govern all future construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state shall must be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code shall ~~furnish~~ provides construction standards and shall must be enforced by the public-service commission. Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.

(2) The commission may SHALL adopt rules to implement and enforce this part. The commission may---in---its discretion, SHALL adopt by rule revised editions STANDARDS FOR ELECTRICAL SAFETY. THE STANDARDS MUST BE BASED ON STANDARDS PUBLISHED IN THE MOST RECENT EDITION of the

BB 0292/02

1 national electrical safety code."

-End-